

NO. 48948-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

A.B.,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
CLALLAM COUNTY, STATE OF WASHINGTON  
Superior Court No. 15-8-00112-8

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ANSWER TO BRIEF OF AMICUS CURIAE

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## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Whether possession of marijuana under the age of 21 and a violation of the school attendance condition of supervision are the same offense for purposes of RCW 13.40.070 when multiple factors including marijuana possession resulted in long-term school suspension?

## **II. STATEMENT OF THE CASE**

On April 16, 2015, A.B. pleaded guilty to Possession of Marijuana Under the Age of 21 and was placed on community supervision as a juvenile. CP 38, 43, 46. The juvenile court imposed the following condition of supervision:

Respondent is further ordered to comply with the MANDATORY SCHOOL ATTENDANCE provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. Respondent is to attend school without unexcused absences, tardiness or disciplinary referrals. Respondent is required to have full cooperation and participation in the classroom and maintain grades to the best of his/her ability.

CP 47 (4.13 (B.) Conditions of Supervision).

On Oct. 8, 2015, Sequim H.S. Assistant Principle Randy Hill searched A.B.'s backpack and found marijuana. CP 80. A.B. was placed on long-term suspension from school that very day. CP 55. The Sequim School District's Notice of Disciplinary Action dated Oct. 8, 2015 which was attached as supporting evidence for the Probation Violation Report states: "Reason For

The Action: The reason for this action is the following alleged misconduct: [A.B.] was in possession of marijuana, a vaporizer and vapes.” CP 55, paragraph 2. Paragraph 3 of the notice states: “Rule(s) Violated: The following District Rules(s) are alleged to have been violated: 3241 P Exceptional Unsafe Misconduct #20 Alcoholic Beverages and Drugs. This is the second occurrence of this nature during [A.B.]’s high school career.” CP 55. The notice also informs that the school placed A.B. on “long-term suspension” pursuant to WAC 392-400-260. CP 55.

Subsequently, on Oct. 9, 2015, the Clallam County Department of Juvenile Services filed a Probation Violation Report alleging: “Failure to attend school without unexcused absences or disciplinary referrals.” CP 54. The State filed a petition to modify the sentence based upon the probation violation report. CP 52–53.

On Oct. 15, 2015, A.B. admitted to the allegations and the juvenile court entered an order modifying community supervision. CP 57. The probation department recommended 10 days in detention and that A.B. be released on Sunday, Oct. 18, the day before he was eligible to go back to school. CP 54. The juvenile court imposed four days detention and release on Oct. 18 as recommended. CP 58. Just over two weeks later, on Oct. 26, 2015, the Clallam County Prosecuting Attorney’s Office received a Law Enforcement Referral from Sequim Police Department (SPD) requesting

charges for Possession of Marijuana. CP 59.

On Nov. 5, 2016, the State filed a criminal information charging A.B. with Possession of Marijuana Under the Age of 21. CP 75. A.B. filed a motion to dismiss the charge of Possession of Marijuana arguing that, under RCW 13.40.070 (3), the State may not pursue both a criminal charge and probation violation based upon the same conduct. CP 76. The juvenile court denied the motion finding that, for the probation violation, the State only needed to establish that A.B. was subject to disciplinary action by the school. CP 20–25. The trial court opined that, “It is beyond objection that a suspension from school is a disciplinary action.” CP 23. Ultimately, the juvenile court held that “[b]oth the probation violation and new charge rely on different allegations and different elements and both can proceed without offending RCW 13.40.070 (3).” CP 25.

On May 12, 2016, A.B. was sentenced to 16 hours community services work and 6 months supervision for Possessing Marijuana under the age of 21. CP 9. A.B. was also ordered to undergo an evaluation for alcohol or other drug dependency and comply with treatment recommendations. CP 11.

### **III. ARGUMENT**

#### **A. THE LONG-TERM SUSPENSION WAS BASED UPON BROADER CONDUCT AND CIRCUMSTANCES THAN MERE POSSESSION OF MARIJUANA.**

Amici argues that the probation violation for failing to attend school without unexcused absences or disciplinary referrals and the criminal charge of possession of marijuana are the same because A.B. was suspended from school for possessing marijuana. Therefore, Amici argues the State violated RCW 13.40.070 and the court erred by not dismissing the criminal charge.

Amici's argument fails to address the complete reason for the long-term suspension in an attempt to equate the probation violation with nothing other than possession of marijuana.

However, A.B. was not placed on long-term suspension for possessing marijuana alone because such conduct would not be enough to permit long-term suspension under WAC 392-400-260. Repetitive behavior of the same nature in violation of the school district rules and a previous corrective action are also required.

"As a general rule, no student shall be suspended for a long term unless another form of corrective action reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature." WAC 392-400-260 (4).

The record in this case makes four things very clear:

1) the Sequim School District placed A.B. on “long-term suspension” pursuant to WAC 392-400-260 (CP 55);

2) the “Reason For The Action” was for allegedly possessing marijuana, *and a vaporizer and vapes*” (CP 55) (emphasis added);

3) the specific “Rule(s) Violated” was District Rule “3241 P Exceptional Unsafe Misconduct #20 Alcoholic Beverages and Drugs.” (CP 55); and

4) the alleged incident was not the first occurrence of a violation of this type by A.B. as the school district specifically noted that “[t]his is the second occurrence of this nature during Anthony’s high school career.” (CP 55).

The record makes clear that the long-term suspension or disciplinary referral was due to more than just possession of marijuana as it included possession of a vaporizer and vapes and repetitive behavior.

Therefore, the long-term suspension and the criminal charge were not based upon the same conduct and such a characterization ignores much of the facts and circumstances on record leading to the suspension.



**B. A SENTENCE OF SUPERVISION AND 16 HOURS OF COMMUNITY SERVICE WORK WILL NOT EXACERBATE A SCHOOL TO PRISON PIPELINE OR CAUSE THE PETITIONER TO DROP OUT OF SCHOOL.**

Amici asserts that the State “advocates an interpretation of RCW 13.40.070(3) that would funnel children out of the school system and into the criminal justice system, exacerbating what is known as the “school to prison pipeline.” Br. of Amici, at 9.

The sentence for possession of marijuana does not result in any suspension from school. There was no incarceration imposed as the court imposed 16 hours of community service work. The court also required A.B. to get treatment for substance abuse. Amici does not cite to any evidence that these requirements would have harmful long-term impacts upon A.B. or increase the likelihood that A.B. would drop out of school or continue criminal behavior.

Furthermore, the very condition that A.B. violated was clearly rehabilitative as it speaks towards staying in school and participating to the best of one’s ability. It is clear that the goal of the State is to foster rehabilitation, not to stack punishments and exacerbate a pipeline from school to prison. Willful activity which justifies a suspension from school cuts against the spirit of this condition and effort at rehabilitation and should be treated as a violation of probation for failing to attend school without

disciplinary referrals.

**C. THE CHARACTERIZATION OF THE PROBATION VIOLATION AS “MISSING SCHOOL” HIGHLIGHTS THE DISTINCTION BETWEEN THE SUPERVISION CONDITION WHICH A.B. VIOLATED AND THE CRIMINAL CHARGE OF POSSESSION OF MARIJUANA.**

The State argued in its response brief that the supervision violation was for missing school in the context of the entire condition of supervision at issue. *See* Br. of Respondent, at 4.

Respondent is further ordered to comply with the MANDATORY SCHOOL ATTENDANCE provisions of RCW 28A.225, and to inform respondent’s school of the existence of this requirement. Respondent is to attend school without unexcused absences, tardiness or disciplinary referrals. Respondent is required to have full cooperation and participation in the classroom and maintain grades to the best of his/her ability.

CP 47 (4.13 (B.) Conditions of Supervision).

This condition focuses on rehabilitation and directs A.B. to fully engage in his/her education. It is equivalent to the classic slogan of encouragement to “stay in school.” The trial court in this case opined that, “It is beyond objection that a suspension from school is a disciplinary action.” CP 23. Perhaps the language “missed school” in reference to the probation violation was inartful. However, it is clear from the context that the supervision violation focuses on the requirement to attend school in good faith and A.B. ran afoul of this by his/her behavior at school.

It does not matter whether A.B. had vapes, a vaporizer, or marijuana or engaged in some other behavior such as bringing a can of beer to school. A.B. was suspended and his/her education was interrupted because of A.B.'s own actions leading to a disciplinary referral. That is why A.B.'s violation of supervision is different than the crime of possessing marijuana. The focus and goal of the State actions of modification of supervision versus filing of the criminal charges are different.

When resolving issues that depend upon the JJA's legislative purpose, we must ensure that our decision "effectuates to the fullest possible extent both the purpose of rehabilitation and the purpose of punishment."

*State v. T.C.*, 99 Wn. App. 701, 707, 995 P.2d 98 (2000) (citing *State v.*

*Rice*, 98 Wn.2d 384, 394, 655 P.2d 1145 (1982).

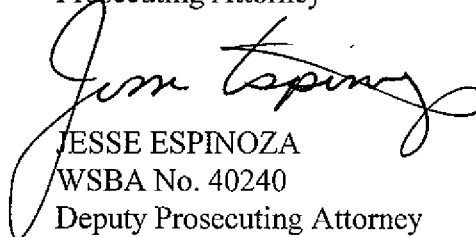
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#### IV. CONCLUSION

The State was not precluded under RCW 13.40.070 (3) from filing a charge for Possession of Marijuana by a person under 21 in this case because the criminal charge and the probation violation for failing to attend school without disciplinary referrals are not the same. For all the foregoing reasons, the Court should affirm.

Respectfully submitted this 13th day of April, 2017.

MARK B. NICHOLS  
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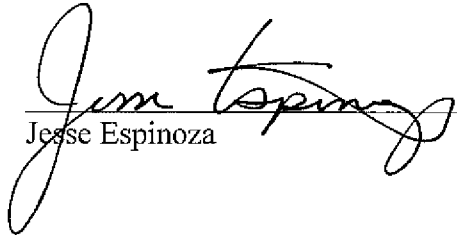


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Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically and/or mailed to Peter B. Tiller, Vanessa T. Hernandez, Emily Chiang, Sara Zier, and Bonnie Linville on April 13, 2017.

MARK B. NICHOLS, Prosecutor

  
Jesse Espinoza

**CLALLAM COUNTY PROSECUTOR**  
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**Comments:**

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